

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,

ROBERT C. BILLAR,
Bar No. 006662

Respondent.

PDJ-2018-9017

ORDER OF SUSPENSION

[State Bar No. No. 18-0632-C]

FILED MARCH 13, 2018

On March 6, 2018, the State Bar filed a Verified Notice of Failure to Comply with Subpoena and Petition for Order to Show Cause Re: Contempt under Rule 47(h)(4),¹ Ariz. R. Sup. Ct.,² (“Petition”), alleging Mr. Billar failed to comply with the subpoena issued for his deposition held on March 5, 2018. It was verified that Mr. Billar had filed no objections to the subpoena with the Disciplinary Clerk.

The Presiding Disciplinary Judge (“PDJ”) having considered the request, ordered Robert C. Billar to appear on Tuesday, March 13, 2018, and show cause why he should not be held in contempt for his failure to comply with the subpoena served upon him. In compliance with Rule 47(h)(4)(A), Mr. Billar was informed a finding of

¹ Unless stated otherwise all Rule references are to the Ariz. R. Sup. Ct.

² Rule 55(b)(1)(B) also provides in part that ‘Respondent may be subjected to contempt proceedings for failure to comply with the subpoena.

contempt could cause a sanction of summary suspension of the license to practice law of a respondent.

On March 13, 2018 David L. Sandweiss, Senior Bar Counsel, appeared on behalf of the State Bar. Mr. Billar appeared representing himself. All exhibits to the Petition were admitted for the hearing, but not required to be separately filed. The certified transcript of the deposition is admitted as Ex. 11.

FINDINGS OF FACT

An investigative subpoena was issued by Chief Bar Counsel pursuant to Rule 47(h)(1) on December 28, 2017. The subpoena required Mr. Billar appear for his deposition and to produce specified documents. The deposition was set for January 18, 2018. The subpoena complied with Rule 47(i). In bold print it stated, “Your Right to Object” which included the required language stating the ability of Mr. Billar to object to the subpoena, the time limits for such an objection and where to file the objection. [Ex. 10.]

The parties agreed to postpone his deposition to January 29, 2018. [Ex. 6 and 7.] Mr. Billar refused to sign the acceptance of service for the new date. An investigative subpoena was issued by Chief Bar Counsel pursuant to Rule 47(h)(1) on January 30, 2018. The subpoena required Mr. Billar appear for his deposition and to produce specified documents. The deposition was set for February 16, 2018. The subpoena complied with Rule 47(i). In bold print, it also informed Mr. Billar of his

rights to file an objection. [Ex. 8.] On January 31, 2018, Mr. Billar was personally served with a subpoena duces tecum and appear at the scheduled deposition. [Ex. 8.]

Mr. Billar has not sought a protective order, or objected to the subpoena as allowed under Rule 47(i), Civil Rule 45(c)³ or otherwise sought judicial relief from the discovery sought. There is no evidence he has tried or been unable to submit the required discovery. He had no reasonable explanation for his failure to disclose the documents sought other than testify he had lost or misplaced them and has insufficient funds to obtain bank copies. His failure to supply the required documents was done knowingly.

CONCLUSIONS OF LAW

Under Rule 47(h)(4)(A), when a person subpoenaed to produce books, paper or documents as required by the subpoena, refuses to, that person may be subject to civil contempt proceedings. Under Rule 47(h)(4)(B), a party may file with the PDJ a verified notice and request for order to show. Under that Rule, if it appears to the PDJ that the subpoena was regularly issued and no good cause is shown for failing to comply with a subpoena, the PDJ may issue an order holding the person in contempt and impose reasonable sanctions, which among other possibilities may be summary suspension of the Respondent to ensure compliance with the subpoena. Under Rule 47(h)(4)(B), upon verification of compliance with the subpoena, the PDJ shall enter an

³ Civil Rule 45(c) is applicable under Supreme Court Rule 48(b).

order of reinstatement. The evidence was that the records sought included the claimed deposit by Mr. Billar of approximately \$40,000 of a client's money in a bank somewhere in Phoenix. Mr. Billar practices in Yuma, Arizona. The monies remain unaccounted for, apparently for years.

Mr. Billar admittedly remains suspended under an Agreement for Discipline by Consent in PDJ 2017-9074. He failed to adhere his Rule 72 notification requirements as ordered in a Judgment of Suspension entered on October 5, 2017. Contempt was also sought pursuant to Rule 72(g) in PDJ 2018-9013-R. He remains precluded from accepting for representation any clients and is precluded from accepting funds for that purpose.

IT IS ORDERED finding Robert C. Billar, Bar No. 006662, in contempt.

IT IS FURTHER ORDERED Robert C. Billar, Bar No. 006662 is interim suspended from the practice of law effective immediately.

IT IS FURTHER ORDERED freezing any trust account and operating accounts of Robert C. Billar and restraining him from making a withdrawal of funds in any manner, from any trust account or operating account without the prior written approval of bar counsel or by order of the PDJ which shall be applied for by formal written motion.

IT IS FURTHER ORDERED Robert C. Billar may purge his contempt by the full and complete delivery of the documents sought by Bar Counsel, proof of which

shall be reported to Bar Counsel and by written notice sworn under oath by Mr. Billar and filed with the Disciplinary Clerk.

IT IS FURTHER ORDERED the temporary suspension of the bar license of Robert C. Billar shall continue until, upon verification of compliance, the PDJ issues an order of reinstatement.

DATED this 13rd day of March, 2018.

William J. O'Neil
William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed
this 13th day of March, 2018, and mailed 14th day of March to:

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by: MSmith